

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'I-1' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER**

ITA No. 3123/DEL/2016 [A.Y 2010-11]

Johnson Mathey India Pvt. Ltd
103, Ashoka Estate
Barakhamba Road
New Delhi

Vs.

The D.C.I.T.
Circle 13(2)
New Delhi

PAN: AAACJ 2919 A

ITA No. 3406/DEL/2016 [A.Y 2010-11]

The D.C.I.T.
Circle 13(2)
New Delhi

Vs.

Johnson Mathey India Pvt. Ltd
103, Ashoka Estate
Barakhamba Road
New Delhi

PAN: AAACJ 2919 A

(Applicant)

(Respondent)

Assessee By : Shri Saksham Singhal, CA
Shri Sumit Mangal, Adv

Department By : Shri Subha Kant Sahu, Sr. DR

Date of Hearing : 22.10.2019

Date of Pronouncement : 30.10.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

The above two captioned cross appeals by the assessee and revenue are preferred against the order of the Id. CIT(A) - 44, New Delhi dated 11.01.2016 pertaining to assessment year 2010-11. Since both these appeals were heard together, these are being disposed of by this common order for the sake of convenience and brevity.

2. The substantive grievances of the assessee read as under:

"5. The Ld. CIT(A) has erred in law and on the facts and circumstances of the case by holding that no benefit was derived by the appellant in respect of payments for various intra group services such as (a) aggregate sum of Rs. 3,15,64,510 as sales commission to Johnson Matthey Japan Inc., Japan and Johnson Matthey Pic, UK (b) aggregate sum of Rs. 1,34,12,002 as cost sharing charges to Johnson Matthey SDN BHD., Malaysia; Johnson Matthey Inorganics SDN BHD., Malaysia; Johnson Matthey Shanghai; and Johnson Matthey Japan Inc., Japan; and (e) service charges of Rs. 10,08,309 to Johnson Matthey Hong Kong Limited; thereby holding the arm's length price of these international transactions of the appellant to be Nil.

3. At the very outset, the ld. counsel for the assessee stated that the underlying issues raised in the grievance of the assessee are covered by the order of the Tribunal in assessee's own case for A.Ys 2007-08 to 2009-10 in ITA Nos. 1817 & 2493/DEL/2014 & 3755/DEL/2015.

4. The ld. DR fairly conceded to this submission of the ld. counsel for the assessee.

5. We have carefully considered the underlying facts in grievance. We have also considered the order of the co-ordinate bench [supra]. We find force in the contention of the ld. counsel for the assessee. Payments for various intra group services under dispute are:

- (a) Sales commission to Johnson Matthey Japan Inc., Japan
- (b) Johnson Matthey Pic, UK

(a) Aggregating to a sum of Rs. 3,15,64,510/-.

6. An identical issue was considered by the co-ordinate bench in its order [supra]. The relevant findings read as under:

"Under these facts and circumstances it is very difficult to hold that the payment of 'sales commission' to AE Japan is either for the purpose of business or for any commercial expediency. Under the arms length scenario no independent enterprise will pay to a third party in a foreign country where it has not been able to show that any sale has been made to the customers or any such services has rendered for the customers in that foreign country. For benchmarking such a payment one has to see, whether any independent Indian party would pay to a foreign entity when neither it has it any customers nor has it been established that any such services have been rendered by the foreign entity which can have some commercial expediency benefitting the Indian company. Thus, under arms length conditions also such a payment does not stand the test of ALP; and accordingly, we confirm the order of the TPO that the payment of 'sales commission' to AE is not meant either for business purpose or under the arms length conditions such a payment is justified. Accordingly, the amount of Rs. 1,08,48,310/- is confirmed."

7. As no distinguishing facts has been brought to our notice, respectfully following the findings of the co-ordinate bench, addition of Rs. 3,15,64,510/- is confirmed.

(b) Aggregating sum of Rs. 1,34,12,002/-

8. As cost sharing charges to Johnson Matthey SDN BHD., Malaysia; Johnson Matthey Inorganics SDN BHD., Malaysia; Johnson Matthey Shanghai; and Johnson Matthey Japan Inc., Japan.

9. A similar issue was considered by the co-ordinate bench in its order [supra]. The relevant findings read as under:

"46. Similarly for the 'cost sharing charge', the assessee has stated that Asian region headquarter of Johnson Matthey group was located in Malaysia which was managed by personnel appointed by JMM group and deputed at headquarters, who are managing the Asia region, like Managing Director, Finance Director, Sales Director, Common Secretary etc. The salary of these employees and other expenditure incurred on these employees have been allocated to the group companies located in Asia region, i.e., India, Japan, China and Malaysia; and the basis for allocation of the expenses incurred to manage Asia region is the net revenue of respective countries located in Asia region. The allocation of expense is based on ratio of figures arrived at after reducing from the turnover of each country and such payment made to such high level senior personnel, definitely has to be reckoned to be part of

business requirement and overall management in the administration of various group entities in the Asian region countries, not only to supervise but also carry out various other functions. Such cost sharing arrangements has to be treated as part of the operating cost of the assessee company and therefore, under TNMM no separate benchmark should be done for this service as it can be factored in arriving at net profit margin. Accordingly, we hold that no separate addition should be made on 'cost sharing charges'. Thus, in view of our finding given above, TPO is directed to give effect and determine the arm's length price accordingly. In the result appeal of the assessee as well as of the department for assessment year 2007-08 is partly allowed for statistical purposes."

10. Respectfully following the findings of the co-ordinate bench, we direct accordingly.

(c) Services Charges of Rs. 10,08,309/-

11. An identical issue was considered by the co-ordinate bench in its order [supra]. The relevant findings read as under:

"Lastly, on the issue of 'server charges', addition of Rs. 8,28,530/- and Rs. 8,44,175/- made by the TPO has been sustained by the Ld. CIT(A), even though no such addition was made in A.Y. 2007-08. In the server charges also the assessee stated that it has paid to JM-UK for maintaining a centralised server for the Asia region, which serves as a common email and communications platform. Cost has been allocated among JM Asia entities proportionately and such an arrangement was made for the purpose of being cost effective and for efficiency of business of all group entities. It has been stated that without any payment assessee would not be able to access the centralised system set up for the Asia region which is required for common e-mail and communicating platform for group entities and even if an independent entities was appointed, then also significant cost would have been incurred. Looking to the facts and the nature of payment, we hold that server charges is definitely inextricably linked with the business activities and is an operating cost of the assessee, therefore, no separate benchmarking is required as the same will be aggregated under TNMM. Accordingly, no separate addition or adjustment is warranted."

12. Respectfully following the findings of the co-ordinate bench, we hold accordingly.

13. As a result, the appeal of the assessee is partly allowed.
14. Similarly, grievance in Revenue's appeal is in respect of deletion of addition of Rs. 2,75,67,978/- on account of royalty to AEs.
15. An identical issue was considered by the co-ordinate bench in its order [supra]. The relevant findings read as under:

"40. The mandate of CUP method is the price charged or paid for the services provided in comparable uncontrolled transaction and its adjusted price paid for availing services which constitutes the benchmark for comparison with price paid for availing of any services in an international transaction. If the price paid for availing the service in a comparable uncontrolled transaction is compared with price paid in an international transaction, then it is reckoned to be at ALP. Since, there is no internal CUP, i.e., there is no similar payment of 'royalty' to an independent third party, therefore, it would be desirable that external CUP is to be applied. Here in this case neither the assessee nor the AO has searched for

any external CUP; and therefore, we deem fit that the issue of benchmarking of 'royalty' payment should be remanded back to the file of the AO/TPO to benchmark 'royalty' payment separately by using external CUP. The data from "**Royalty Stat**" available for automotive industry can be used for search of external comparables and the payment of 'royalty' paid for use of technical knowhow for manufacturing of automotive components can be used for the purpose of benchmarking. The onus would be on the assessee to carry out the fresh search process and after selecting external comparables and carrying out comparability analysis may present the same to the TPO, who shall analyse the external comparables and benchmark the royalty payment of the assessee. With this direction the issue of royalty payment is set aside to the file of the AO/TPO and the TPO who shall give appropriate opportunity of hearing to the assessee to substantiate the ALP of the said transaction."

16. Respectfully following the findings of the co-ordinate bench, we hold accordingly.

17. As a result, the appeal of the Revenue is allowed for statistical purposes.

18. In the result, the appeal of the assessee in ITA No. 3123/DEL/2016 is partly allowed whereas the appeal of the Revenue in ITA No. 3406/DEL/2016 is treated as allowed for statistical purposes.

The order is pronounced in the open court on 30.10.2019.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 30th October, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	